IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WP(C).No. 27475 of 2004(U)

PETITIONER:

K. BHANU, S/O. KRISHNAN,
AGED 63 YEARS, DRIVER (RETD.), KSRTC AND
RESIDING AT `PRABHA MANDIRAM', POLACHIRA,
KILIMANOOR.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:

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1. THE KERALA STATE ROAD TRANSPORT
CORPORATION, TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM REPRESENTED BY ITS
MANAGING DIRECTOR.

2. THE EXECUTIVE DIRECTOR (V & S),
K.S.R.T.C., TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM.

3. THE K.S.R.T.C. APPELLATE TRIBUNAL
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.

BY ADV.SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.27475/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF MEMORANDUM DATED 21.L7.1995 ISSUED BY THE ASSISTANT TRANSPORT OFFICER, K.S.R.T.C., KILIMANOOR TO THE PETITIONER.

EXT.P2: TRUE COPY OF THE CHARGE SHEET DATED 29.5.1993 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P3: TRUE COPY OF ORDER DATED 6.12.1995 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P4: TRUE COPY OF JUDGMENT DATED 17.10.1996 IN C.C.NO.251/93 IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, ATTINGAL.

EXT.P5: TRUE COPY OF JUDGMENT DATED 1.10.2003 IN O.P.NO.16483/2000 PASSED BY THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.

EXT.P6: TRUE COPY OF REPRESENTATION DATED 31.10.2003 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P7: TRUE COPY OF MEMORANDUM DATED 2.12.2003 ISSUED BY THE SUPERINTENDENT(V), K.S.R.T.C., THIRUVANANTHAPURAM TO THE PETITIONER.

EXT.P8: TRUE COPY OF ORDER DATED 9.1.2004 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P9: TRUE COPY OF R.P.NO.9/04 DATED 27.2.2004 SUBMITTED BY THE COUNSEL FOR THE REVISION PETITIONER.

EXT.P10: TRUE COPY OF O.P.CARD DATED 17.9.2001 ISSUED BY THE DIRECTORATE OF MEDICAL EDUCATION, MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM TO THE PETITIONER.

EXT.P11: TRUE COPY OF RDER DATED 17.7.2004 IN R.P.NO.9/04 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P12: TRUE COPY OF ORDER DATED 14.11.1996 ISSUED BY ASST. PERSONNEL OFFICER(PENSION), K.S.R.T.C., THIRUVANANTHAPURAM.

EXT.P13: A TRUE COPY OF ORDER NO.PA 15/034585/95 DTD. 11.1.2005.

RESPONDENTS EXTS.: (1ST RESPONDENT):

EXT.R1(a): TRUE COPY OF THE ORDER DATED 29.10.2004 PASSED BY THE 1ST RESPONDENT.

PIUS C. KURIAKOSE,J.

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W.P.(C)No.27475 of 2004

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Dated: 12th March, 2007

JUDGMENT

A driver of the K.S.R.T.C. who retired from service on attaining the age of superannuation on 31.7.1995 is the writ petitioner. The K.S.R.T.C., the Executive Director (V & S) and the K.S.R.T.C. Appellate Tribunal are the respondents.

2. The petitioner was issued with Ext.P2 charge-sheet to which he submitted a written statement denying the allegation that he was responsible for the accident. He points out that the charge-sheet Ext.P2 was issued to him under Rule 16 of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 while according to him the same should have been issued under Rule 15 of the said Rules. He points out that the document which had been enclosed along with Ext.P2 was Report No.TR5-4273/92/ATL dated 10.6.1992 of the District Transport Officer and that no enquiry was ever conducted nor list of witnesses appended nor was he given any opportunity to confront and cross examine the author of the report (No. TR5-4273/92/ATL). He points out that absolutely no enquiry or action was initiated against the driver of the other bus which was involved in the accident. He was thereafter issued with a show-cause notice dated 28.10.1995 to which he filed explanations. In the

explanations also he pointed out that the charge-sheet had not disclosed the loss which had been quantified and which is sought to be recovered from him by way of punishment. Without considering the explanations submitted by him, the disciplinary authority issued Ext.P3 order. The petitioner submits that in the Criminal Case which was charge-sheeted on the basis of the very same incident, he was given an acquittal under Section 255(1) of the Code of Criminal Procedure and relies on Ext.P4 judgment in that regard. The petitioner submits that since Ext.P3 was passed without initiating any steps under Rule 3, Part III, K.S.R. and since recovery was time-barred in terms of that Rule, he approached this court relying on various judgments including the Full Bench judgment of this court in **Xavier v. K.S.E.Board** (1979 KLT 80) by filing a Original Petition which was disposed of by this court through Ext.P5 judgment. As directed in Ext.P5, he submitted a representation on 31.10.2003 along with a copy of the impugned order and Ext.P5 judgment before the Managing Director. The petitioner submits that though under Ext.P5 it was the Managing Director of the K.S.R.T.C. who was directed to take a decision, it was the Executive Director who issued hearing notice and he relies on Ext.P7 in that regard. He then

produces Ext.P8 order passed by the Managing Director and submits that Ext.P8 order is issued by the Managing Director on the basis of hearing which was conducted by the Executive Director. Against Ext.P8 he approached the K.S.R.T.C. Appellate Tribunal with a revision petition and Ext.P9 is copy of that revision petition. To show that his health condition is highly precarious and that he is finding it difficult to pull on with the provisional pension which alone which is presently getting, he has produced Ext.P10 series of medical records. The petitioner complains that the K.S.R.T.C.Appellate Tribunal was not prepared to consider Ext.P9 revision petition on merits. But, accepted the contention of the K.S.R.T.C. that the order under challenge is only recovery of certain amounts from the pensionary benefits of the petitioner on account of an accident and do not come within the jurisdiction of the Tribunal. Ext.P11 is copy of the order of the Tribunal. Ext.P12 produced by the petitioner is copy of the pension payment order. He points out that under Ext.P12 what has been sanctioned to him is only provisional pension of Rs.648/- and DCRG of Rs.21,915/-. The petitioner complains that because of Exts.P2, P3, P9 and P11, he is now relegated to the position before issuing Ext.P5 judgment and is deprived of all due benefits. On the

above facts the petitioner raise various grounds and has filed this Writ Petition seeking the following reliefs:

1. Call for the records leading to the issuance of Exts.P2, P3, P9 and P11.

2. Declare that Exts.P2, P3, P9 and P11 are unsustainable in the eyes of law and therefore to quash the same.

3. Issue a writ of mandamus or appropriate writ or order or direction to the first and second respondents to pay full pension with arrears, commuted value of pension, full Death-cum-Retirement Gratuity, Last Pay along with interest at the rate of 12 percent per annum from 1.10.1995 to the date of its payment, within a reasonable time.

4. Declare that the first and second respondents are liable to pay compensation and costs to the petitioner.

5. Issue an appropriate writ or order or direction awarding cost and compensation to the petitioner from the first and second respondents.

2. The K.S.R.T.C. has filed a counter affidavit denying the allegations and repudiating the grounds raised and justifying Exts.P2, P3, P9 and P11.

3. Reiterating his stand earlier the petitioner has filed a reply affidavit. Along with the reply affidavit the petitioner has produced

Ext.P13 order dated 11.1.2005 issued by the Deputy Chief Accounts Officer.

4. This court on 7.10.2004 passed the following interim order:

"In the counter affidavit filed on behalf of the 1st respondent it is stated that "In view of the records of the Appellate Tribunal the matter is being reviewed by the Managing Director and a decision will be taken at the earliest." There will be a direction to the Managing Director to pass the orders as undertaken in the counter affidavit within two weeks from today. The order thus passed shall be produced before this court on 26.10.2004."

Thereafter on 7.12.2004 after noticing Ext.R1(a) order which was issued on the basis of the interim order dated 7.10.2004 a fresh interim order is issued. By the above interim order dated 7.12.2004 this court left open the petitioner's right to challenge Ext.R1(a) and directed the respondent-Corporation to disburse the full pension with arrears due to the petitioner as per rules, D.C.R.G. less Rs.7,162/-, commuted value of pension and the last pay, i.e. pay for the month of July, 1995 within six weeks.

5. Heard Mr.N.Unnikrishnan, learned counsel for the petitioner and Mr.K.Prabhakaran, Standing Counsel for the K.S.R.T.C.

6. Even though Mr.Unnikrishnan addressed very extensive arguments on the basis of the various grounds raised in the Writ Petition and taken me to a particular judicial precedent which was relied on by the petitioner in his revision petition before the K.S.R.T.C.Appellate Tribunal also, I am not inclined to consider the merits of those grounds. But I find some force in the submission of Mr.Unnikrishnan that Ext.P13 order which is passed by the Deputy Chief Accounts Officer on 11.1.2005 actually takes away the benefits which had been granted to the petitioner by the Managing Director under Ext.R1(a). Mr.Unnikrishnan further submitted that the petitioner who retired from service as early as in 31.7.1995 has been paid the amounts which were really due to him only after the elapse of some ten years and that there is justification for directing the K.S.R.T.C. to pay interest and in this regard also the learned counsel relied on various decisions of this court.

7. Mr.K.Prabhakaran, Standing Counsel for the K.S.R.T.C. would submit that substantive relief has been given to the petitioner under Ext.R1(a) order whose liability has now been reduced to Rs.7162/- and this court in jurisdiction for judicial review will not be justified in interfering with Ext.R1(a) more so because of the petitioner's

submission before this court on 7.12.2004 that he intends to challenge Ext.R1(a).

8. Having considered the rival submissions addressed before me, I am of the view that the petitioner is justified in insisting of release of whatever benefits which are now due to him on the strength of Ext.R1(a) as the same now stands and that the petitioner's grievances on Ext.R1(a) are to be voiced by him through a petition for review. Under these circumstances, the Writ Petition will stand disposed of issuing the following directions:

1. Respondents 1 and 2 will pay to the petitioner immediately the amounts which are due to him on account of D.C.R.G. less Rs.7162/- which has been redetermined as his liability under Ext.R1(a).

2. Respondents 1 and 2 will pay to the petitioner the salary which was due to him for the month of July, 1995 (the last month of his service) if the same is not already paid to him, immediately.

3. Respondents 1 and 2 shall sendover to the petitioner a detailed statement as to how the monthly pension payable to him has been redetermined.

4.The petitioner is permitted to seek review of Ext.R1(a) before the Managing Director of the K.S.R.T.C. and if an application for review is

received by the Managing Director within one month of the petitioner receiving copy of this judgment, the same will be entertained by the Managing Director. Along with the review petition the petitioner is permitted to submit a representation to the Managing Director seeking payment of interest on account of the belated payment of the D.C.R.G. and the amounts on account of commuted value of pension. The petitioner will refer to the judicial precedents on which he relies for showing his eligibility for interest on the belated payments. The said representation as well as the review petition will be considered and disposed of by the Managing Director after hearing the petitioner within three months of receiving them.

srd **PIUS C.KURIAKOSE, JUDGE**